

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SILVON S. SIMMONS,

Plaintiff,

vs.

**ATTORNEY DECLARATION
IN OPPOSITION TO
SHOTSPOTTER DEFENDANTS'
SUMMARY JUDGMENT MOTION**

JOSEPH M. FERRIGNO, II,
SAMUEL GIANCURSIO,
MARK WIATER,
CHRISTOPHER MUSCATO,
ROBERT WETZEL,
MICHAEL L. CIMINELLI,
JOHN DOES 1-20,
CITY OF ROCHESTER,
SHOTSPOTTER INC.,
SST, INC.,
JOHN DOES 21-30, and
PAUL C. GREENE,

17-CV-6176-MWP-FPG

Defendants.

CHARLES F. BURKWIT declares the following under penalty of perjury:

1. I am an attorney duly licensed to practice law before the Courts of New York and this Court. I am the principal in the Burkwit Law Firm, PLLC, the attorneys for plaintiff Silvon Simmons, and am fully familiar with the facts of this case and with all prior proceedings.
2. This Declaration is submitted in opposition to the motion of the ShotSpotter defendants for summary judgment dismissing the complaint against them in its entirety.

3. The plaintiff will not oppose that branch of the defendants' motion seeking the dismissal of Count VI of the complaint, sounding in malicious abuse of process.
4. For the reasons set out in his Memorandum of Law, submitted herewith, he contends that summary judgment as to the other causes of action is not warranted.
5. Numerous deposition extracts, as cited in the plaintiff's counterstatement of material facts, are relevant to this motion. Those depositions were as follows:
 1. On November 20, 2020, Robert Bresler was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit A.
 2. On March 9, 2021, Robert Bresler was again deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit B.
 3. On November 25, 2020, Paul Greene was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit C.
 4. Mr. Greene had testified at the trial of *People v Simmons*. Relevant excerpts of his trial testimony are attached hereto as Exhibit D.
 5. On March 2, 2021, Mark Wiater was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit E.
 6. On April 12, 2021, Ellyn Colquhoun was deposed. Relevant excerpts of her EBT testimony are attached hereto as Exhibit F.
 7. On May 3, 2021, Detron Parker was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit G.
 8. On May 3, 2021, Dawn Darragh was deposed. Relevant excerpts of her EBT testimony are attached hereto as Exhibit H.

9. On June 29, 2021, Amy Bauer was deposed. Relevant excerpts of her EBT testimony are attached hereto as Exhibit I.
10. On June 29, 2021, Eric Ferguson was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit J.
11. On July 15, 2021, Patrick Giancursio was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit K.
12. On July 16, 2021, William Wagner was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit L.
13. On July 19, 2021, Flamur Zelenovic was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit M.
14. On September 10, 2021, William Gallagher was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit N.
15. On October 5, 2021, Joseph Ferrigno was deposed. Relevant excerpts of his EBT testimony are attached hereto as Exhibit O.
6. The plaintiff filed an extensive affidavit of facts in opposition to the summary judgment motion brought by the municipal defendants, and that document is incorporated herein by reference.
7. The plaintiff makes no reference to defendants' expert Garry A. Pate, as no declaration or report from this witness is found among the papers in support of their motion.
8. In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 6, 2023

BURKWIT LAW FIRM, PLLC
s/Charles F. Burkwit
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